

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH
New Delhi, this 11th day of January, 1995.
OA No.1164/1994

Shri P.T.Thiruvengadam, Hon'ble Member(A)

Kulleshwar Dayal
s/o Shri Prahlad
r/o Vill. Dhantala, PO Kharkhoda
Dt. Meerut, UP, PIN: 245206

.. Applicant

By Shri M.L. Sharma, Advocate

Versus

1. Chief Secretary
NCT of Delhi
5, Sham Nath Marg, Delhi-54

2. Director of Education
NCT of Delhi
Old Secretariat, Delhi-54

3. Dy. Director of Education
Dt. East, Rani Garden
Geeta Colony, Delhi

.. Respondents

By Shri D.N.Trisal, Advocate

ORDER (Oral)

By order dated 14.3.90, the applicant was appointed to the post of Educational & Vocational Guidance Counsellor (EVGC). At that time, medical examination had not taken place and hence the appointment was subject to his passing the medical examination. In the office order dated 14.3.90, it has been stipulated that in the event of being declared medically unfit, his appointment shall be terminated with effect from his date of joining and no pay and allowances shall be paid for the entire period.

2. Subsequently on a representation and after ^{an} ~~three~~ examinations, he was declared medically fit for service by letter dated 11.12.91 (Annexure 4-8).

3. 7 The applicant is now in service and has filed this OA for a direction for payment of salary for the period from 22.3.90 to 12.12.91 with consequential benefits.

..P/2

11

4. The learned counsel for the applicant argued that unfit certificate in the first instance should not have been issued since the job requirements were such that the physical disability of the applicant do not come in the way of discharging the duties attached to the post of EVGL.

5. The respondents had realised this at a very late stage and the fitness certificate was issued only in November, 1991. It was their intention to prevent him to continue to discharge the duty of the applicant from March, 1990 onwards. The lapse on the part of the respondents in not ^{properly} medically examining the applicant should not in any way prejudice the continued performance of duty by the applicant from March, 1990 and the consequential payment.

6. It was also argued that the applicant has been continuously performing his duty, irrespective of the unfit medical certificate. In support of his case, Annexures A-13 to A-15 have been attached. These bring out the details of the performance in the tests given by the ^{applicants to} the students. It is claimed that these annexures are ~~some~~ evidence of the duties performed continuously from March, 90 till the fit certificate was issued in November, 1991.

7. It is further argued that the applicant's service has not been terminated at any stage, yet his payment for the period as referred to above has been denied.

8. It was also claimed that the applicant functioned independently of the normal school administration and the nature of his duty is such that the Principal of the School to which the applicant is attached has no control over the working of the applicant.

12

9. The learned counsel for the respondents countered the above arguments by mentioning that the issue of fitness certificate ^{only} in November, 1991, even granting that such a fit certificate could have been issued earlier, can not confer any special benefit. The applicant was not available for doing his duty during the period 15.3.90 to 12.12.91. It was argued that the attendance register kept by the school has been duly signed by the applicant from 22.3.90 when he joined his service and gave his joining report to the Principal of the school till 14.5.90. The school was closed for summer vacation on 15.5.90 and on reopening in July, 1990 the applicant did not turn up. He presented himself for duty only on 13.12.91 and started signing the attendance register from this date.

10. The records were summoned and I note in the attendance register produced, the applicant is shown as having been present only upto 14.5.90 from 22.3.90 and later on from 13.12.91. At this stage, the learned counsel for the applicant argued that the applicant was given a separate attendance register. I find it difficult to accept this argument since the applicant had been signing the attendance register from the date he joined, i.e. 22.3.90 till May, 1990 and ^{from} in December, 1991. It can not be claimed that the applicant is outside the control of the Principal since the appointment order says that the applicant is posted to the Govt. Boys Sr. Sec. School, Vivek Vihar.

..P/4

13

11. Regarding the argument that no termination order has been served consequent to the medical unfitness certificate after the medical examination on 29.3.90, it is the case of the respondents that the unfit certificate was itself signed by the applicant on 30.5.90, after which the applicant did not report for duty. He joined duty only on 13.12.91 by which time the fit certificate dated 11.12.91 was available and the issue of termination did not arise.

12. As regards the papers produced at Annexure A-13 to A-15, the respondents have averred in their reply that these are fictitious and manipulated. In none of these documents, certification by any school authority is available. On this, the learned counsel for the applicant stated that it was not the practice for such documents to be certified by the school authority. Be that as it may, the main document to bring out whether the applicant was on duty or not is the attendance register as discussed above.

13. The respondents have stated in the reply that the salary for the period 22.3.90 to 14.5.90 is being released. If the amount has not been released, this may be released within two months from the date of receipt of this order.

14. In the circumstances, there is no merit in the application, It is liable to be dismissed.

..P/5

14

15. Even though the merits of the case have been discussed, I note that the cause of action arose in November, 1991 since it is alleged that payment has not been made from 1990 upto end of 1991. The applicant had given representations on 30.3.92, 22.4.92 and 19.8.92. Yet this OA has been filed only on 31.5.94. It is admitted that no reply to these representations had been received by the applicant till the time of filing this OA. I note that the application has been filed beyond the permissible period as per limitation. Even on this ground the OA is liable to be dismissed.

16. In the circumstances, the OA is disposed of with the only direction that the payment for the period from 22.3.90 to 15.5.90 should be released by the respondents within two months from the date of receipt of this order.

The OA is thus disposed of. No costs.

P. T. Thiruvengadam
(P.T. Thiruvengadam)
Member (A)
11.1.1995

/tvq/